

FILED

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Board of Vocational Nursing
and Psychiatric Technicians

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. PT-2008-3521

MICHAEL JONATHAN TOMLIN
P.O. Box 23
Morro Bay, CA 93443

FIRST AMENDED ACCUSATION

Psychiatric Technician License No. PT 33171

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs.

2. On or about March 29, 2006, the Board issued Psychiatric Technician License No. PT 33171 to Michael Jonathan Tomlin (Respondent). The Psychiatric Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2012, unless renewed.

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1 duties of a psychiatric technician, in which event the record of the conviction shall be conclusive
2 evidence of the conviction. The board may inquire into the circumstances surrounding the
3 commission of the crime in order to fix the degree of discipline.

4

5 “(m) The commission of any act punishable as a sexually related crime, if that act is
6 substantially related to the duties and functions of the licensee.”

7 **REGULATORY PROVISIONS**

8 8. California Code of Regulations, title 16, section 2578, provides, in pertinent part:

9 “For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5
10 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
11 considered to be substantially related to the qualifications, functions or duties of a licensed
12 psychiatric technician if to a substantial degree it evidences present or potential unfitness of a
13 licensed psychiatric technician to perform the functions authorized by his license in a manner
14 consistent with the public health, safety, or welfare. . . .”

15 **COST RECOVERY**

16 9. Section 125.3 provides, in pertinent part, that a Board may request the administrative
17 law judge to direct a licensee found to have committed a violation or violations of the licensing
18 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
19 case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Substantially Related Crime)**

22 10. Respondent is subject to disciplinary action under sections 490 and 4521, subdivision
23 (f), in conjunction with California Code of Regulations, title 16, section 2578, in that Respondent
24 was convicted of a crime that was substantially related to the qualifications, functions, and duties
25 of a psychiatric technician as follows:

26 a. On or about March 30, 2010, after pleading nolo contendere, Respondent was
27 convicted of the felony of violating Penal Code section 261.5, subdivision (c) (unlawful sexual
28 intercourse with a minor who is more than three years younger), in the criminal proceeding

1 entitled *People v. Tomlin* (Super. Ct. San Luis Obispo County, 2009, No. F000434506). The
2 criminal court sentenced Respondent to three years' probation ending March 30, 2013, with terms
3 including not having any personal, electronic, telephonic or written contact with the victim, and
4 not coming within 100 yards of the victim. The circumstances surrounding the conviction are
5 that for more than one year, beginning in 2008, Respondent had a sexual relationship with the
6 minor step-daughter of Respondent's co-worker starting when the minor was 16 years old and
7 Respondent was approximately 38 years old. On July 2, 2009, the criminal court issued a
8 restraining order under Penal Code section 136.2 prohibiting Respondent from having personal,
9 electronic, telephonic or written contact with the victim, and prohibiting him from coming within
10 100 yards of her.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Sexual Misconduct)**

13 11. Respondent is subject to disciplinary action under section 4521, subdivision (m), in
14 that Respondent was convicted of a crime involving acts of sexual misconduct. Complainant
15 refers to and incorporates all the allegations contained in paragraph 10 and subparagraph (a),
16 above, inclusive, as though set forth fully.

17 **DISCIPLINARY CONSIDERATIONS**

18 12. In order to determine the degree of discipline, if any to be imposed on Respondent,
19 Complainant alleges the following:

20 a. On or about December 8, 2009, in the parking lot of the Arroyo Grande High School,
21 Respondent was arrested in the City of Arroyo Grande for violating the restraining order issued
22 by the criminal court in *People v. Tomlin* (Super. Ct. San Luis Obispo County, 2009, No.
23 F000434506) by Respondent sitting in his vehicle with the same minor female who he was
24 ordered not to have contact with and not to come within 100 yards.

25 b. On or about April 27, 1999, Respondent was convicted in Colorado of the
26 misdemeanors of assault and battery, in the criminal proceeding entitled *People v. Tomlin* (Muni.
27 Ct. Aurora County, 1999, No. C56312). The court sentenced Respondent to 30 days in jail,
28 placed him on probation for a period of one year, and fined him.

1 c. On or about March 3, 2006, the Board issued Respondent a notice of warning stating
2 that the 1999 conviction was substantially related to his license, and warning of disciplinary
3 action for “[f]uture substantiated reports that you have engaged in similar behavior or
4 otherwise violated the law or regulations governing your practice as a psychiatric
5 technician.”

6 **PRAYER**

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board issue a decision:

- 9 1. Revoking or suspending Psychiatric Technician License No. PT 33171, issued to
10 Respondent Michael Jonathan Tomlin;
- 11 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
12 enforcement of this case, pursuant to Code section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

14
15 DATED: August 29, 2011



16 TERESA BELLO-JONES, J.D., M.S.N., R.N.
17 Executive Officer
18 Board of Vocational Nursing and Psychiatric Technicians
19 Department of Consumer Affairs
20 State of California
21 *Complainant*

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